



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XR015

Notice of Availability of Draft Environmental Assessment on the Effects of Issuing an Incidental Take Permit No. 23148

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; availability of a Draft Environmental Assessment; request for comments.

SUMMARY: NMFS announces the availability of the Draft Environmental Assessment (EA) on the effects of issuing an Incidental Take Permit (ITP) (No. 23148) to Exelon Generating Company, LLC, pursuant to the Endangered Species Act (ESA) of 1973, as amended, for the incidental take of shortnose (*Acipenser brevirostrum*) and Atlantic (*Acipenser oxyrinchus*) sturgeon associated with the otherwise lawful operation of the Eddystone Generating Station in Eddystone, PA. The facility is requesting the permit be issued for a duration of 10 years. NMFS is requesting comment on the draft EA.

DATES: Written comments must be received at the appropriate address or fax number (see **ADDRESSES**) on or before [*insert date 30 days after date of publication in the Federal Register*].

ADDRESSES: The EA is available for download and review at <https://www.fisheries.noaa.gov/action/incidental-take-permit-eddystone-generating-station> under the section heading Supporting Materials. The application and conservation plan are also

available upon written request or by appointment in the following office: Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13631, Silver Spring, MD 20910; phone (301) 427-8402; fax (301) 713-4060.

You may submit comments, identified by NOAA-NMFS-2019-0076, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0076 click the “Comment Now” icon, complete the required fields, and enter or attach your comments.
- *Fax:* (301) 713-4060; Attn: Celeste Stout.
- *Mail:* Submit written comments to the Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13631, Silver Spring, MD 20910; Attn: Celeste Stout.

Instructions: You must submit comments by one of the above methods to ensure that we receive, document, and consider them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, etc.) confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Celeste Stout, Phone: (301) 427-8436 or E-mail: celeste.stout@noaa.gov.

SUPPLEMENTARY INFORMATION: Publication of this notice begins the official public comment period for this draft EA. Per the National Environmental Policy Act (NEPA), the purpose of the draft EA is to evaluate the potential direct, indirect, and cumulative impacts caused by the issuance of Permit No. 23148 to Exelon Generating Company, LLC, for the incidental take of shortnose (*Acipenser brevirostrum*) and Atlantic (*Acipenser oxyrinchus*) sturgeon. All comments received will become part of the public record and will be available for review.

Section 9 of the ESA and Federal regulations prohibit the ‘taking’ of a species listed as endangered or threatened. The ESA defines “take” to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides a mechanism for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

Exelon Generating Company, LLC, owns Eddystone Generating Station (the facility), a natural gas/fuel oil-fired electric power generating facility that operates as a peaking plant, (i.e., typically running at higher levels of generation capacity during the summer and winter periods). The facility is located at 1 Industrial Highway Eddystone, PA 19022. The facility presently consists of two natural gas/fuel oil-fired electric generating units that are steam-electric generators. Cooling water for each unit is withdrawn from the Delaware River through a cooling water intake structure (CWIS), which is located along the west shore of the River, directly in front of the facility. The operation of the CWIS is the primary aspect of the facility operations

under consideration for this ITP due to the potential impacts to ESA-listed sturgeon. Exelon conducted entrainment sampling at the facility in 2005-2006, 2016, and 2017. One Atlantic sturgeon yolk-sac larva was collected in May 2017. Thus, Exelon determined it was necessary to apply for an ITP in accordance with the requirements under Section 10(a)(1)(B) of the ESA.

NMFS received a draft permit application from Exelon on June 28, 2018. Based on our review of the draft application, we requested further information and clarification. On December 21, 2018, Exelon submitted an application. Based on review of the updated application, NMFS and Exelon held further discussions regarding what needed to be incorporated in the Conservation Plan. On June 21, 2019, Exelon submitted a revised application and Conservation plan. This application was considered complete and on July 16, 2019, NMFS published a notice of receipt of the Exelon application for the Eddystone facility in the Federal Register (84 FR 33924). The comment period ended on August 15, 2019. No comments were received.

Conservation Plan

Section 10 of the ESA specifies that no permit may be issued unless an applicant submits an adequate conservation plan. The conservation plan prepared by Exelon Generation Company, LLC, describes measures to monitor, minimize and mitigate the impacts of incidental takes of ESA-listed shortnose and Atlantic sturgeon. To avoid and minimize take of sturgeon, Exelon will only operate Eddystone's circulating water pumps (CWPs): (1) when the station is generating electricity; and (2) for incidental maintenance or testing (generally once per month) (referred to collectively as "Essential Station Operations"); or as required by a governmental agency or other entity with jurisdiction to require operations. Depending on station generation and ambient water temperatures, Exelon will also limit operations to one CWP per unit when possible. In addition, Exelon will rely on the river water pumps (RWPs) to provide cooling water

for other critical station operations outside of Essential Station Operations. These measures will avoid and minimize the incidental take of sturgeon due to entrainment or impingement by eliminating or reducing water withdrawals at times when such withdrawals are not specifically required for Essential Station Operations or for governmental agency-mandated use.

Additionally, Exelon will make all reasonable efforts to schedule fuel oil deliveries outside March 15-July 15. Continued monitoring related to the take of shortnose and Atlantic sturgeon will be ongoing and funding will be provided through the facility's annual operating budget.

National Environmental Policy Act

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). The draft EA was prepared in accordance with NEPA (42 USC 4321, et seq.), 40 CFR 1500-1508 and NOAA policy and procedures (NAO 216-6A and the Companion Manual for the NAO 216-6A).

Alternatives Considered

In preparing the draft EA, NMFS considered the following 2 alternatives for the action.

Alternative 1: No Action. In accordance with the NOAA Companion Manual (CM) for NAO 216-6A, Section 6.B.i, NMFS is defining the no action alternative as not authorizing the requested incidental take of ESA-listed shortnose (*Acipenser brevirostrum*) and Atlantic sturgeon (*Acipenser oxyrinchus*). This is consistent with our statutory obligation under Section 10(a)(1)(B) of the ESA to either: (1) deny the requested ITP or (2) grant the requested ITP and prescribe mitigation, monitoring, and reporting requirements. Under the no action alternative, NMFS would not issue the ITP, in which case we assume Exelon would continue to operate the Eddystone facility as described in the application without implementing the full suite of specific mitigation measures, monitoring, reporting explained in the Conservation Plan. The CEQ

Regulations and the Companion Manual for NAO 216-6A require consideration and analysis of a no action alternative for the purposes of presenting a comparative analysis to the action alternatives. The no action alternative, serves as a baseline against which the impacts of the action alternatives will be compared and contrasted.

Alternative 2: Issue Permit as Requested in Application (Proposed Action): Under Alternative 2, an ITP would be issued to exempt Exelon Generating Company, LLC, from the ESA prohibition on taking of shortnose (*Acipenser brevirostrum*), Atlantic sturgeon (*Acipenser oxyrinchus*) during the otherwise lawful operation of the Eddystone Generating Station. As required under Section 10(a)(1)(B), the ITP would require Eddystone to operate as described in the proposed Conservation Plan to avoid and minimize take of shortnose and Atlantic sturgeon.

Final permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: November 26, 2019.

Angela Somma,

Chief, Endangered Species Conservation Division,

Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019-26006 Filed: 11/29/2019 8:45 am; Publication Date: 12/2/2019]